IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7723 of 1999

with

SPECIAL CIVIL APPLICATION No 10038 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

PATEL SHANKERBHAI K

Appearance:

1. Special Civil Application No. 7723 of 1999
   MR HARDIK C RAWAL for Petitioner
   MR P.C.Upadhaya for Mr.MUKESH H RATHOD for Respondent No. 1

2. Special Civil ApplicationNo 10038 of 1999
   MR P.C.Upadhaya for Mr.MUKESH H RATHOD for Petitioner
   MR HARDIK C RAWAL for Respondent No. 1

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 12/06/2000

ORAL JUDGEMENT

#. I have heard Mr. Hardik .Ravalthe learned counsel on behalf of petitioner in Special Civil Application No.7723 of 1999 and I have also heard the learned counsel for the respondent of Special Civil Application No . 10038 of 1999. I have also heard Mr. P.U.Upadhyay learned counsel for the respondent in Special Civil Application No. 7723 of 1999 and petitioner in Special Civil Application No. 10038 of 1999. Both the Special Civil Applications involve the same question of facts and law and arising out of the same judgment and order passed by the Labour Court , Navsari in Ref.(LCN) No.99 of 1997.

#. The respondent of Special Civil Application No. 7723 of 1999 was working as a conductor under the Gujarat State Road Transport Corporation(hereinafter referred to as the Corporation). While working as such, a surprise check was made by the corporation on Poona-Palitana route. At the time of checking it was found that the respondent collected Rs.328.50 p. from 16 passengers and the tickets were issued to these passengers either from the tray of another conductor or some used tickets were re-issued from his own tray to some of the passengers. Accordingly a report was submitted to the authority and on the basis of the report, a charge sheet was issued to the respondent and a departmental inquiry was held. The respondent did not participate in the departmental inquiry and he has not even challenged the documents relied ion by the Corporation before the Inquiring Officer. After the inquiry, the respondent Patel Shankerbhai K was dismissed from service by order dated 11.1.1997. Having felt aggrieved by the order of dismissal, the respondent approached the Labour Court, Navsari by way of Reference (LCN) No. 99 of 1997 and the Labour Court, after hearing the parties set aside the order of dismissal from service of the petitioner and directed the Corporation to reinstate the respondent in service. However, the Labour Court has stopped one increment permanently and did not also pass any order for payment of back wages. Having felt aggrieved by the order of the Labour Court, the Corporation has filed Special Civil Application oNo.7723 of 1999 challenging the order of the Labour Court. The respondent of Special Civil Application No. 7723 of 1999 also challenged the order of the Labour Court by filing Special Civil Application No.10038 of 1999. The case of the petitioner of Special Civil Application No. 10038 of 1999 is that the Labour Court has committed an error in not allowing

back wages on his reinstatement. Mr. Hardik Raval,the learned counsel for the petitioner in Special Civil Application No.7723 of 1999 submitted that the respondent did not challenge any document or he even did not participate in the departmental inquiry before the Inquiring Officer. The learned counsel also submitted that the petitioner has also filed an application before the Labour Court that he does not challenge the legality of the proceedings before the Inquiring Officer and therefore, the Labour Court has committed an error in interfering with the the punishment imposed by the Disciplinary Authority. The learned counsel further submitted that in the instant case the respondent is involved with misappropriation of public money and therefore, such a person cannot be retained in service. The learned counsel further submitted that though it is not possible for the Corporation to undertake checking in all the routs and once it is established that the respondent has committed misappropriation of public money, then if such person is continued in service, he will again adopt the same means to misappropriate public money and therefore, it is desirable that services of such persons are dispensed with.

#. The learned counsel also submitted that before the Labour Court the legality and validity of the proceedings have not been challenged. The respondent has only challenged the quantum of punishment imposed by the Disciplinary Authority. The learned counsel very fairly submitted that in accordance with the provisions of section 11-A of the Industrial Disputes Act, if the Labour Court is satisfied that the punishment is disproportionate to the offence committed by the employee, then only the Court can interfere with the punishment In the instant case the respondent is involved with the misappropriation of public money and therefore, dismissal of service cannot be treated as disproportionate to the alleged offence. The learned counsel submitted that the Labour Court has erred in interfering with the punishment imposed by the Disciplinary Authority.

#. Mr. P.U.Upadhyaya learned counsel on behalf of the respondent of Special Civil Application No. 7723 of 1999 and Special Civil Application No.10038 of 1999 submitted that it is true that the respondent did not challenge the legality of the proceedings before the Inquiring Officer but the respondent has challenged the findings of the Inquiring Officer and also the punishment imposed by the Disciplinary Authority. The learned counsel submitted

that the Labour Court after examining the documents has found that some documents relied on by the Corporation, are forged and the Labour Court has also made an observation that the Institution did not satisfactorily prove the charges against the respondent. I cannot accept the argument of the learned counsel on behalf of the respondent in Special Civil Application No. 7723 of 1999. It is an admitted fact that the petitioner did not appear before the Inquiring Officer or even did not adduce any document either oral or documentary. The respondent also did not appear before the Inquiring Officer and allowed the proceedings to be heard exparte. At no stage, the respondent challenged the documents relied on by the Corporation before the Inquiring Officer. Since the respondent did not challenge the evidence either oral or documentary before the Inquiring Officer, I am of the view that the Labour Court has committed an error in disagreeing with the finding of the Inquiring Officer. It is not clear how the Labour Court has come to a different finding when there is no material before him. Consequently, I am of the opinion that the Labour Court has committed an error in interfering with the finding of the Inquiring Officer. I have gone through the order of the Labour Court as well as the papers as produced in both the cases. After hearing the learned counsel for both the parties, I am also of the view that the punishment imposed by the Corporation appears to be harsh in relation to the offence alleged to have been committed by him. It appears that an amount of Rs. 328.50 p.. is involved and said amount has been said to have been misappropriated by the respondent. Since this is the first offence committed by the respondent and having regard to the quantum of money, I am of the view that he should not have been dismissed from service but some penalty by way of stoppage of increments from the salary of the respondent may be just and adequate. Stoppage of one increment or non payment of back wages did not appear to be adequate punishment for committing an offence of misappropriation of money. Having regard to the quantum of the amount I am of the view that stoppage of four increments with cumulative effect will meet the ends of justice. Accordingly the order of the Labour Court is modified to the extent that four increments of the Patel Shankerbhai K, respondent of SCA No.7723 of 1999, the conductor under the Corporation shall be withheld with cumulative effect. With the aforesaid observations Special Civil Application No.. 7723 of 1999 is partly allowed and Special Civil Application No.10038 of 1999 is dismissed. Rule is made absolute to the aforesaid extent in Special Civil Application No.7723 of 1999 and Notice is discharged in

Special Civil Application No.10038 of 1999. No order as to costs in both Special Civil Applications.

(P.K.Sarkar.J)

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